

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY HOWARD,

Plaintiff,

v.

KERN COUNTY LERDO FACILITY
MEDICAL CHIEF, et al.,

Defendants.

Case No. 1:21-cv-00931-JLT-CDB (PC)

**ORDER DISCHARGING ORDER TO
SHOW CAUSE** (Doc. 36)

**FINDINGS AND RECOMMENDATIONS
TO DISMISS DEFENDANT PETERS
FROM THIS ACTION FOR PLAINTIFF'S
FAILURE TO EFFECT SERVICE OF
PROCESS**

14-DAY OBJECTION DEADLINE

Plaintiff Billy Howard is proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The case proceeds against Defendants Ramon Mansilungan, Kendra Lawrence, Kenya Gooden, and Elena Peters for deliberate indifference to serious medical needs in violation of the Eighth Amendment.

I. RELEVANT PROCEDURAL BACKGROUND

The Court issued its Order Finding Service Appropriate and Forwarding Service Documents to Plaintiff for Completion and Return on June 27, 2023. (Doc. 30.) Plaintiff submitted the completed service documents on July 12, 2023 (Doc. 31) and the Court issued its Order Directing Service by the United States Marshals Service Without Prepayment of Costs on that same date (Doc. 32).

1 On September 14, 2023, the United States Marshall filed its USM-285 form indicating
2 service could not be effected on Defendant Elena Peters. (Doc. 35 at 1.) The United States
3 Marshal was advised that Peters was not employed at Kern Medical Center. (*Id.*)

4 On September 15, 2023, this Court issued its Order to Show Cause (“OSC”) Why
5 Defendant Peters Should Not Be Dismissed from This Action For Plaintiff’s Failure to Provide
6 Sufficient Information to Effectuate Service. (Doc. 36.) Plaintiff was directed to show cause,
7 within 21 days, why Defendant Peters should not be dismissed from the action, or to provide
8 additional information to assist the United States Marshal in locating Defendant Peters for service
9 of process. (*Id.* at 2-3.) Plaintiff was cautioned that a failure to respond to the OSC would result in
10 dismissal pursuant to Federal Rule of Civil Procedure 4(m). (*Id.* at 3.)

11 More than 21 days have passed, and Plaintiff has failed to respond to the OSC or to
12 provide additional information to assist the United States Marshal in effecting service of process
13 on Defendant Peters.

14 II. DISCUSSION

15 Federal Rule of Civil Procedure 4(m) provides as follows:

16 If a defendant is not served within 90 days after the complaint is filed, the court—
17 on motion or on its own after notice to the plaintiff—must dismiss the action
18 without prejudice against that defendant or order that service be made within a
19 specified time. But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

20 Fed. R. Civ. P. 4(m). Absent a showing of good cause, courts have discretion under Rule 4(m) to
21 extend the time for service or to dismiss the action without prejudice. *In re Sheehan*, 253 F.3d
22 507, 513 (9th Cir. 2001). A prisoner plaintiff is required to provide sufficient information to
23 effectuate service of process on a defendant by the United States Marshal. *Walker v. Sumner*, 14
24 F.3d 1415, 1421-22 (9th Cir. 1994), abrogated in part on other grounds in *Sandin v. Connor*, 515
25 U.S. 472 (1995).

26 Service of Plaintiff’s complaint was authorized on June 27, 2023 (Doc. 30) and
27 summonses were issued on July 12, 2023, when the Court directed Service by the United States
28 Marshal (Doc. 32). Defendants Mansilungan, Lawrence and Gooden were granted an extension of

1 time within which to file a responsive pleading on September 13, 2023 (*see* Doc. 34) and have
2 subsequently filed an answer to Plaintiff's complaint (*see* Doc. 37). However, on September 14,
3 2023, the United States Marshal returned as unexecuted the summons directed to Defendant
4 Elena Peters. (Doc. 35.) As noted, Defendant Peters could not be served because she is "not
5 employed by Kern Medical." (*Id.*)

6 In the OSC issued September 15, 2023, Plaintiff was advised the United States Marshal
7 was unable to serve Defendant Elena Peters because Peters is not employed at Kern Medical
8 Center. (Doc. 36.) Plaintiff was directed to file a written response to the OSC within 21 days, or
9 to provide additional information concerning Defendant Peters to allow for service of process by
10 the United States Marshal. (*Id.*) Here, however, Plaintiff has failed to show good cause or
11 otherwise respond to the OSC concerning his failure to provide the United States Marshal with
12 sufficient information to effect service of process on Defendant Peters. Therefore, the Court will
13 not extend the time for service and will recommend Defendant Peters be dismissed from this
14 action without prejudice for Plaintiff's failure to effect service of process in accordance with Rule
15 4(m).

16 **III. CONCLUSION, ORDER AND RECOMMENDATION**

17 Accordingly, **IT IS HEREBY ORDERED** that the OSC issued September 15, 2023 is
18 **DISCHARGED**.

19 Further, for the reasons stated above, **IT IS HEREBY RECOMMENDED** that:

- 20 1. Defendant Elena Peters be **DISMISSED**, without prejudice, from this action for
21 Plaintiff's failure to effectuate service of process; and
- 22 2. The Clerk of the Court be directed to terminate "Kern County Lerdo Facility Nursing
23 Staff" as a named defendant on the docket for this action.

24 These Findings and Recommendations will be submitted to the district judge assigned to
25 this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these
26 Findings and Recommendations, a party may file written objections with the Court. The
27 document should be captioned, "Objections to Magistrate Judge's Findings and
28 Recommendations." Failure to file objections within the specified time may result in waiver of

rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **October 10, 2023**


UNITED STATES MAGISTRATE JUDGE